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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 95-127
Table of Allotments,) RM-8676
FM Broadcast Stations.) RM-8726
(Avra Valley, Comobabi, Florence, Oracle,)
Oro Valley, and San Carlos, Arizona)¹)

FIRST REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 21, 1997

Released: January 24, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 10 FCC Rcd 8247 (1995), issued in response to a petition filed on behalf of Rita Bonilla ("petitioner") proposing the allotment of Channel 277A to Oro Valley, Arizona, as that community's second local FM service. Petitioner and John M. Singer ("Singer") each filed supporting comments in response to the *Notice*. Additionally, a counterproposal was filed on behalf of Desert West Air Ranchers Corporation ("Desert West"),² permittee of Station KCDX(FM), San Carlos, Arizona,³ as well as the licensee of Station KLQB(FM), Oracle, Arizona.⁴ Petitioner filed a motion for extension of time to file reply comments.⁵ Reply comments were filed on behalf of Desert West.

¹The communities of Avra Valley, Comobabi, Florence, Oracle and San Carlos have been added to the caption.

²Public Notice of the counterproposal was given on November 9, 1995 (Report No. 2112).

³Although Desert West was issued a construction permit for Station KCDX(FM) to operate on Channel 279A at San Carlos (File No. BPH-910516ML), it was subsequently modified to specify operation on Channel 276C2 in the context of MM Docket No. 93-69. See 10 FCC Rcd 7581 (1995).

⁴Although Station KLQB(FM) is licensed on Channel 276A it was modified to specify operation on Channel 279A in MM Docket No. 93-69. See 10 FCC Rcd 7581 (1995).

⁵Petitioner's request for an extension of time to file reply comments to the *Notice* was premised upon its stated need for additional time to respond to the counterproposal filed by Desert West. However, in accordance with Section 1.46(a) of the Commission's Rules, the Commission does not routinely grant requests for extension of time. Moreover, Section 1.46(b) requires that motions for extension of time be filed at least seven (7) days prior to the comment filing deadline, and limits consideration of late-filed motions for extension of time to emergency situations. Movant's request did not comply with the requirements of Section 1.46(a) and made no statement that an emergency existed in this case. Therefore, petitioner's request was not entertained. In any event, as the comment deadline for responding to Desert West's counterproposal expired well beyond the date established for reply comments to the

No other comments were received.

2. In response to the *Notice*, Desert West's counterproposal set forth the following two options, as follows:

<u>OPTION I</u>		
<u>Channel No.</u>		
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Florence, Arizona	--	276C1
Oro Valley, Arizona	248A	248A, 270A
Oracle, Arizona	279A	292A
San Carlos, Arizona	276C2	--
Comobabi, Arizona	*276A	-- or *275A

<u>OPTION II</u>		
Avra Valley, Arizona	--	275A
Oro Valley, Arizona	248A	248A, 270A
Oracle, Arizona	279A	277C3

Desert West advises that Option I would change the community of license for its Station KCDX(FM) from San Carlos to the incorporated community of Florence, Arizona. To accommodate the Florence, Arizona, proposal, Desert West also requests the substitution of Channel 292A for Channel 279A at Oracle, Arizona, and modification of the license of its co-owned Station KLQB(FM), at its existing site at that community.⁶ The Florence proposal also requires either the deletion of vacant noncommercial Channel *276A at Comobabi, Arizona, or its replacement with Channel *275A.⁷ Petitioner acknowledges that requested Channel 276C1 at Florence is short spaced to vacant Channel 276B at Cananea, Sonora, Mexico. However, in accordance with the terms of the 1992 U.S./Mexico FM Broadcasting Agreement, Desert West remarks that such short spaced proposals are entertained as specially negotiated allotments, provided contour protection is afforded towards the affected facility or allotment. In this instance, Desert West states that if Option I is adopted, Station KCDX(FM) at Florence would have restricted facilities towards the vacant Mexican allotment at Cananea. Additionally, as the

Notice, petitioner was afforded ample time to formulate a proper response if it chose to do so.

⁶The distance between Florence and Channel 279A at Oracle at coordinates 32-37-07 and 110-47-20 is 48.8 kilometers (30 miles) whereas a distance of 75 kilometers (47 miles) is required between Class A and C1 third adjacent channel allotments.

⁷The distance between Florence and vacant Channel 276A at Comobabi at coordinates 32-03-24 and 111-48-06 is 146.6 kilometers whereas a distance of 200 kilometers (124 miles) is required between Class A and C1 co-channel allotments.

requested allotment of Channel 276C1 at Florence conflicts with the petitioner's request to provide a second local FM service at Oro Valley on Channel 277A,⁸ Desert West offers the alternate allotment of Channel 270A to Oro Valley in an effort to accommodate the petitioner's request to provide a second local FM service to the latter community.

3. Desert West's counterproposal Option I seeks to invoke the provisions of Section 1.420(g) and (i) of the Commission's Rules, which permits the modification of a station authorization to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, ("Change in Community of License MO&O"), 5 FCC Rcd 7094 (1990). In support of Option I, Desert West advises that the reallocation to the incorporated community of Florence is mutually exclusive with its existing authorization at San Carlos. The distance between San Carlos and the Desert West's specified site at Florence is 36.7 kilometers (23 miles) whereas a distance of 224 kilometers (139 miles) is required in this instance.⁹ In further support of its proposal Desert West states that adoption of Option I is in the public interest and would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),¹⁰ as the reallocation from San Carlos (population 2,918)¹¹ to Florence (population 7,510) would provide the latter community with its first local aural transmission service and would enable it to upgrade the facilities of Station KCDX(FM) to Channel 276C1. In support of Option I, Desert West advises that Florence is a county seat, and is not associated with any Urbanized Area. Desert West also states that the proposed city grade contour (70 dBu) of Station KCDX(FM) at Florence will not reach any Urbanized Area, citing *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

4. Further, Desert West states that although Option I contemplates the removal of the sole local potential service at San Carlos, no loss of existing service will result from its proposal as Station KCDX(FM) has never been operative, citing *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993); and *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992). Desert West reports that San Carlos will continue to receive reception services from a minimum of twelve (12) AM stations, and three FM stations, including KCDX(FM). Moreover, Desert West asserts that the

⁸The distance between Florence and Oro Valley is 72.3 kilometers (45 miles) whereas a distance of 133 kilometers (82 miles) is required between Class A and C1 first adjacent channel allotments.

⁹Coordinates specified by Desert West for a transmitter site at Florence are 33-03-30 and 110-47-00. Coordinates at the authorized site of Station KCDX(FM) at San Carlos are 33-23-13 and 110-44-25.

¹⁰The allotment priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).)

¹¹Population figures reported herein were taken from the 1990 U.S. Census unless noted otherwise.

reallotment and upgrade will enable Station KCDX(FM) to increase the degree of coverage within its 1 mV/m contour from its present theoretical level of 24,775 persons to a population of 101,535. Finally, Desert West states that if Option I is adopted, it will promptly file applications for the contemplated facilities, and will proceed to prompt construction thereof upon Commission approval of its applications.

5. As to the requested deletion of Channel *276A at Comobabi to accommodate the proposal for Channel 276C1 at Florence, Desert West reports that the channel has remained fallow since its allotment to Comobabi over 10 (ten) years ago. Therefore, Desert West urges that not only would the deletion be justified, but it is questionable whether any party could establish community status for Comobabi since it is not listed in the U.S. Census. Nevertheless, in the event the Commission wishes to retain the noncommercial allotment, petitioner asserts that Channel *275A could be substituted for Channel *276A at Comobabi.

6. Desert West urges that in the event the Commission is unable to adopt its proposal to provide a first local transmission service to Florence, adoption of Option II would enable it to upgrade its Station KLQB(FM) at Oracle, Arizona, to Channel 277C3. Additionally, to accommodate the Oracle, Arizona, modification, Desert West proposes the allotment of Channel 275A to Avra Valley, Arizona, as that community's first local aural transmission service. As both proposed Channel 277C3 at Oracle and Channel 275A at Avra Valley conflict with the proposed allotment of Channel 277A at Oro Valley, Arizona, Desert West again offers that Channel 270A could be allotted to Oro Valley to accommodate the petitioner's request. Desert West states that in the event Option II is adopted in lieu of Option I, it will file applications to upgrade Station KLQB(FM) at Oracle and to implement a first local transmission service at Avra Valley. However, of the two options presented, Desert West stressed a strong preference for adoption of Option I. Therefore, and in the absence of any opposing comments, we will consider only Option I of Desert West's counterproposal herein.

7. Initially, as indicated above, since the petitioner's proposal to allot Channel 277A to Oro Valley and the Florence, Arizona, aspect of Desert West's proposal are mutually-exclusive, Desert West proposed the alternate consideration of Channel 270A at Oro Valley in an effort to satisfy the petitioner's desire to provide a second local FM service to that community. A staff engineering study has determined that Channel 270A can be allotted to Oro Valley consistent with the technical requirements of the Commission's Rules. However, Oro Valley as well as the communities involved in Desert West's proposal are within 320 kilometers (199 miles) of the United States-Mexican border, thus necessitating concurrence in the proposals by the Mexican government. At this time, we have obtained such approval with respect to each of the communities set forth in Desert West's proposal with the exception of the proposed allotment of Channel 270A to Oro Valley.¹² Therefore, we are severing Desert West's proposal from this

¹²Although the Commission received concurrence to the petitioner's request to allot Channel 277A to Oro Valley, it has been superceded by Desert West's counterproposal. In the event Desert West had not offered alternate channel 270A for consideration at Oro Valley, but rather had chosen to proceed on a comparative basis, its proposal would

proceeding since it no longer conflicts with the Oro Valley proposal, and no oppositions to its proposal were received.

8. Based upon the information presented, we will reallocate Channel 276C2 from San Carlos to Florence, Arizona, as a Class C1 channel, since it will result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. *See Change of Community, supra*. Florence, which is not within nor adjacent to an urbanized area will receive its first local aural transmission service. Moreover, the reallocation and concomitant modification of the petitioner's authorization will afford it an opportunity to provide service to an additional 76,760 persons within Station KCDX(FM)'s projected 1 mV/m contour at Florence. While we carefully evaluate a proposal that would result in a loss of existing reception service, in this instance Station KDCX(FM) is unbuilt. Therefore, we do not consider its removal from San Carlos to present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service that the public has become reliant upon. *See Sanibel and San Carlos Park, Florida; Pawley's Island and Atlantic Beach, South Carolina; and Glencoe and LeSueur, Minnesota, supra*. In any event, the populace of San Carlos will continue to receive reception services from a minimum of twelve (12) AM stations, and three FM stations, including KCDX(FM). To accommodate the reallocation and upgrade at Florence, we will also substitute Channel 292A for Channel 279A at Oracle, Arizona, and modify the license for Station KLQB(FM) to specify operation on Channel 292A. We will also substitute Channel *275A for vacant Channel *276A at Comobabi, Arizona, as requested, to accommodate the Florence proposal. With respect to the modification of license of Station KLQB(FM), Oracle, no *Order to Show Cause* was issued, nor is reimbursement necessary since that facility is also licensed to the Desert West.

9. Channel 276C1 can be allotted to Florence in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, at Desert West's specified site located 56 kilometers (34.8 miles) east of the community at coordinates 33-03-30 and 110-47-00.¹³ Channel 292A can be allotted to Oracle, Arizona, at the licensed site of Station KLQB(FM), consistent with the technical requirements of the Commission's Rules.¹⁴ Additionally,

have prevailed in any event pursuant to the Commission's allotment priorities regardless of whether Option I or Option II was selected. The Oro Valley proposal constitutes a second FM channel request and would provide a third local service to that community whereas the proposal to allot Channel 276C1 to Florence (Option I) or to Avra Valley (Option II) represents a first local service to either community, and therefore ranks as a higher allotment priority. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

¹³ Although this site is located farther from Florence than the maximum distance the Commission normally assumes for the provision of city grade coverage (3.16 mV/m), compliance with the requirements of Section 73.315 of the Rules can be attained in accordance with the Commission's standard prediction methods. *See Sections 73.313(d)(1)-(3)*. *See also Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988).

¹⁴ We note that the allotment of Channel 292A at Oracle is short-spaced to the licensed site of Station KONZ(FM), Channel 292A, Arizona City, Arizona, at coordinates 32-37-43 and 111-34-09. However, Station KONZ(FM) was modified to specify operation on Channel 293A in the context of MM Docket No. 93-211, and

Channel *275A can be allotted to Comobabi, Arizona, in compliance with the technical requirements of the Commission's Rules. Mexican concurrence was obtained for Channels 276C1, Florence, and Channel *275A, Comobabi, as specially negotiated, restricted allotments.¹⁵ Concurrence was also received for Channel 292A at Oracle.¹⁶

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 10, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Comobabi, Arizona	*275A
Florence, Arizona	276C1
Oracle, Arizona	292A
San Carlos, Arizona	--

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Desert West Air Ranchers Corporation for Station KCDX(FM) (File No. BPH-910516ML), IS MODIFIED to specify operation on Channel 276C1 at Florence, Arizona, in lieu of Channel 276C2 at San Carlos, Arizona, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

therefore Channel 292A was deleted from Arizona City, Arizona, effective May 25, 1995. See 10 FCC Rcd 3873 (1995). Station KONZ(FM) was subsequently issued a construction permit for Channel 293A at coordinates 32-50-04 and 111-38-15, which is compatible with the use of Channel 292A at Oracle.

¹⁵Channel 276C1, Florence, is limited to 23.2 kW ERP and 300m HAAT or the equivalent along the 168.7° azimuth towards Channel 276B, Cananea, Sonora, Mexico. Channel *275A, Comobabi, is limited to 11 kW ERP and 100m HAAT or the equivalent along the 168.7° azimuth towards Channel 274B, Nogales, Sonora, Mexico.

¹⁶Channel 292A at Oracle is consistent with the minimum distance separation requirements contained in the 1992 US/Mexico FM Broadcasting Agreement, and therefore may operate at maximum permitted parameters for its class with respect to existing Mexican broadcast facilities and allotments.

- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Desert West Air Ranchers Corporation, licensee of Station KLQB(FM), Oracle, Arizona, IS MODIFIED to specify operation on Channel 292A in lieu of Channel 279A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KLQB(FM)'s license (File No. BLH-900809KC), except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license File No. BLH-900809KC, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Desert West Air Ranchers Corporation, permittee of Station KCDX(FM) is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license and upgrade at Florence, Arizona.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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